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## State of Montana

# REPORT TO THE LEGISLATURE

### Sunset Review

## BOARD OF VETERINARIANS

PLEASE RETURN

The 1977 Sunset Law terminates the Board on July 1, 1981. This review provides information to assist the Legislature in making the decision to terminate, modify or continue the Board.

This report presents eleven areas for Legislative consideration (page 25) including:

- ▶ Clarification of veterinary technician license authority.
- ▶ Timeliness of complaint resolutions.
- ▶ Standards of conduct.
- ▶ Board membership and appointments.
- ▶ Drug sales by retail outlets.

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March 1980

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The Legislative Audit Committee  
of the Montana State Legislature:

Herein transmitted is our sunset performance review of the Montana Board of Veterinarians. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1981.

The review focused upon an examination of board operations. It does not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Professional and Occupational Licensing, the members of the Board of Veterinarians, the Governor's Office of Budget and Program Planning, the Montana Veterinary Medical Association, and the Montana Department of Livestock.

We wish to express our appreciation to the members of the board and to the director of the department and

his staff for the assistance they provided during the review. We also wish to thank the members of the veterinary profession for assistance they gave us.

Respectfully submitted,

*Morris L. Brusett*

Morris L. Brusett, C.P.A.  
Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF VETERINARIANS

	<u>City of Residence</u>	<u>Term Expires</u>
Donald L. Buelke, D.V.M. President	Victor	1981
William A. Rogers, D.V.M. Vice President	Great Falls	1982
Duane M. Douglas, D.V.M. Secretary	Sidney	1984
E. Wayne Boland, D.V.M.	Billings	1980
Douglas Delaney Public Member	Grass Range	1980
Harry A. Michael, D.V.M.	Worden	1983

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Ed Carney	Director
Brenda Butcher	Administrative Assistant

## Chapter I

### BACKGROUND

This sunset performance review addresses state regulation of veterinarians and veterinary technicians by the Board of Veterinarians--a state board within the Department of Professional and Occupational Licensing.

### REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Veterinarians. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must objectively examine the need for each regulatory board/agency and the audit committee must offer recommendations for reestablishment, modification, or termination.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

- (a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?
- (b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?
- (c) Is there another less restrictive method of regulation available which could adequately protect the public?

- (d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?
- (e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?
- (f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the profession, and interested members of the public.

In defining legislative intent, the sunset law (section 2-8-101(2), MCA) states that, by requiring periodic evaluation in the form of a performance review, the legislature will be in a better position to ensure that agencies and programs exist only to be responsive to state residents' needs. The sunset law terminates the Board of Veterinarians on July 1, 1981.

#### VETERINARY PROFESSION

Veterinary medicine is concerned with the care of injured/diseased animals and the prevention of animal injuries/disease that may affect public health, safety, or welfare. There are a number of specialized fields of veterinary medicine. These fields include the

veterinary surgeon practitioner, public health veterinarian, and veterinary microbiologist. However, general practice Doctors of Veterinary Medicine (DVM) make up the largest number of individuals within the profession.

According to American Veterinary Medical Association (AVMA) data, more than 75 percent of all veterinarians are in private practice. Veterinarians in private practice specialize in large (cattle, horses, etc.), small (cats, dogs, etc.), or mixed animal practices. Other practice areas include regulatory (federal and state veterinarian inspectors, etc.), military, and laboratory veterinary medicine.

Recently, there has been an increasing percentage of veterinarians establishing companion animal (pets) practices with a corresponding percentage decrease in the number of veterinarians working in food or large animal practice. A number of factors have contributed to this switch from farm animal to companion animal practice, including more office based work, shorter work weeks, a less hazardous work setting, and potentially higher income.

The number of active veterinarians in the United States has increased from about 11,000 in 1940 to approximately 31,000 in 1975. Based on previous increases and AVMA data, the number of veterinarians is

now estimated at 35,000. Even more significant increases are projected for the 1980's as several new schools of veterinary medicine will open.

In 1975, the United States Department of Health, Education, and Welfare estimated that there were 14.6 veterinarians per 100,000 population in the United States. By 1980, that ratio is projected to be at 16.8 per 100,000. This compares with an estimated current Montana rate of 34.6 per 100,000 which is based on the 1979 statistics of licensed veterinarians practicing in the state.

In addition to the increasing number of veterinarians nationwide, there is a growing number of veterinary technicians--now over 5,000. The technician is usually college trained to assist the veterinarian with various treatments and other routine veterinary related procedures. The veterinary technician may perform these various functions only under the direct supervision of a licensed veterinarian. Thus, the increase in the number of veterinary technicians is due in part to the increase in the number of veterinarians, as well as to the increasing demands on the services of the veterinarian.

In fiscal 1979, there were a total of 621 veterinarians licensed by the Montana State Board of Veterinarians. Of this figure, approximately 280 licensees

were residing and/or practicing in Montana. Of the licensed in-state veterinarians, approximately 95 percent are actively practicing. Also, in 1979, there were 59 veterinary technicians licensed in Montana. Of these, approximately 50 were residing in the state.

There are approximately 125 veterinary clinics throughout the state. In addition, there are mobile veterinary services and some veterinary services provided in licensee residences.

A veterinarian residing in or out of Montana may wish to perform regulatory functions such as certification or inspection of certain animals for exportation. To perform these functions, a veterinarian must be licensed by the board and must receive federal accreditation from the U.S. Department of Agriculture and a deputyship from the Montana Department of Livestock. Currently, 278 (265 in-state, 13 out-of-state) deputy veterinarians are certified by the Department of Livestock. This represents approximately 95 percent of the current in-state veterinarians. This certification is essential to normal operations for a veterinarian specializing in a large animal practice.



## Chapter II

### BOARD OF VETERINARIANS

#### INTRODUCTION

The State Board of Veterinary Medical Examiners, as originally named, was created in 1913. The original law created a three-member board of licensed veterinarians and defined the practice of veterinary medicine. The law established professional standards and regulated the practice of veterinarians, as well as those of the farrier (primarily a horseshoer who performed certain veterinary related services).

The veterinary practice law has remained relatively unchanged since creation, with only a few exceptions. Specifically, farriers are no longer licensed, and the board size has increased.

In addition to setting standards and qualifications for veterinarians, the law now recognizes and sets standards and qualifications for licensing veterinary technicians.

The board performs the following functions as set forth in the Montana Codes Annotated (MCA):

1. establishes regulations necessary to enable adequate administration of the laws;
2. prepares and supervises oral and practical portions of examination of applicants for a veterinarian license (Montana's board now accepts the results of the national written examination. The examination is administered to graduates of an approved school of veterinary medicine by the state veterinary board of the state in which the school is located);

3. prepares and supervises written and practical examination of applicants for a veterinary technicians license;
4. reviews and ensures that all qualifications for licensure are met, and issues licenses to practice as either a veterinarian or veterinary technician;
5. ensures that all applicants for renewal of licenses have met continuing education requirements;
6. annually renews licenses of veterinarians and veterinary technicians;
7. reviews complaints against licensees, analyzes actions, and causes the prosecution of persons violating the law even when no complaint is filed;
8. conducts hearings when needed to consider revocation or suspension of a license; and
9. adopts and has printed forms needed for the applicant and licensee, such as the licenses for veterinarians and veterinary technicians.

## BOARD OPERATIONS

### Structure

The present Board of Veterinarians is composed of six members; five licensed veterinarians and one public member. The public member must be a consumer of veterinarian services, but may not be a licensee of the board or any other board under the Department of Professional and Occupational Licensing (DPOL). Members are appointed by the governor for five-year renewable terms. The Montana Veterinary Medical Association (MVMA) nominates the veterinarian board members to be appointed each year. Appointments to the board are selected from this list by the governor. However, if

no nominee has the required qualifications, the governor may appoint any qualified licensed and registered veterinarian. Each veterinarian member must be a reputable licensed veterinarian and a graduate of a college that is approved by the American Veterinary Medical Association (AVMA). The member must also have practiced veterinary medicine in the state for at least five years prior to the appointment.

The board is required to hold at least two regular meetings each year with examinations offered in January and June. The board may specify the time and place for meetings and examinations; however, they are generally held in Bozeman at the Veterinary Research Laboratory. Since January of 1977, the board has held seven meetings; all but one held in Bozeman.

Board members receive \$25 per day when in attendance at board meetings, in addition to the regular mileage and per diem reimbursement normally provided by the state.

#### Staffing and Funding

The board is attached to the Department of Professional and Occupational Licensing for administrative purposes. The department currently allocates about one-third of a full-time staff position to the board. The department provides administrative support in the form of secretarial, legal, budgeting, and accounting

services. However, the board is autonomous in decision-making functions regarding policymaking, licensing, and disciplinary procedures.

The board is financed from an account in the earmarked revenue fund. Money for the fund is derived from the collection of license, renewal, and examination fees. The current fees charged by the board are indicated in Illustration 1.

FEE SCHEDULE

<u>Type of Fee</u>	<u>Veterinarian</u>	<u>Veterinary Technician</u>
Examination and Application*	\$75	\$25
Reexamination*	75	25
Renewal	25	10
Restoration for Late Renewal**	25	25

\*Amount of fee may be set by the board without legislative action so as to maintain a fund balance that is adequate to administer the provisions of the law.

\*\*Fee charged for late renewal of license or failure to meet continuing education requirements before July 1 each year.

Source: Compiled by the Office of the Legislative Auditor.

Illustration 1

Illustration 2 indicates the financial history of the board from fiscal year 1973-74 through fiscal year 1978-79.

BOARD OF VETERINARIANS  
FINANCIAL HISTORY

<u>Fiscal Year</u>	<u>Revenue</u>	<u>Expenditures*</u>	<u>Balance</u>
1978-79	\$16,951	\$16,897	\$9,179
1977-78	12,894	9,999	9,125
1976-77	6,907	5,707	6,230
1975-76	7,115	6,010	5,030
1974-75	6,803	7,907	3,925
1973-74	5,137	3,449	5,029

\*Includes prior year expenditures, adjustments, and accruals.

Source: Compiled by the Office of the Legislative Auditor, based on annual Montana financial reports.

Illustration 2

BOARD GOALS AND OBJECTIVES

The sunset law requires each board/agency under review to define its goals and objectives. The Board of Veterinarians defined its goal as being:

--To provide and assure protection to the public that those people practicing or commencing to practice veterinary medicine in Montana meet educational and professional standards of competence and to maintain that competence by regulation in accordance with the statutes and rules in the best interest of the public.

Based on the preceding goal, the board listed objectives as follows:

- To review complaints against licensees to determine if disciplinary actions are necessary, and if so, to initiate the same.
- To investigate complaints against individuals practicing veterinary medicine without a license.
- To examine qualified applicants twice a year for licensure as a veterinarian to assure that they are competent to practice by requiring passage of a written, practical, and oral examination as required.

- To examine qualified applicants twice a year for licensure as a veterinary technician to assure that they are competent to practice under the direct supervision of a veterinarian by requiring passage of a written and practical examination.
- To issue annual certificates of registration each year to licensed veterinarians who have satisfied the requirement of attendance at a continuing educational course approved by the board and have paid the required fee.
- To issue annual certificates of registration each year to licensed veterinary technicians who have satisfied to the board that they have attended a continuing education course and have paid the required fee.
- To review various continuing education programs and determine their pertinency and relevancy.
- To provide for the inspection of veterinary facilities to maintain uniform standards of sanitation and cleanliness.

#### BOARD FUNCTIONS

##### Licensing

Individuals wishing to practice as either a veterinarian or veterinary technician must meet or exceed certain qualifications set by law. Applicants wishing to receive a license to practice veterinary medicine or veterinary surgery must meet the following qualifications:

- Make application to the Department of Professional and Occupational Licensing on a form furnished by the department and accompanied by evidence of good moral character.
- Successful graduation and a degree from a veterinary medical school accredited by the American Veterinary Medical Association (AVMA) (copy of diploma must accompany application). Approximately 25 schools are accredited in the United States and four schools in Canada.

--Successful completion and performance on the national examination (given at the end of student course work), and the Montana practical and oral examinations.

--Must be a citizen of the United States.

--Payment of an examination and license fee.

The requirements for obtaining a license to practice as a veterinary technician include the following:

--Make application to the board within 30 days prior to established date of examination accompanied by evidence of good moral character.

--Successful completion and proof of diploma or certification from a school of veterinary technology approved by the board (board approves all schools that are fully accredited by the AVMA).

--Successful completion and performance on the Montana written and practical examination.

--Payment of an examination and license fee.

The board is responsible for ensuring that all required qualifications are met before issuing a license to practice as either a veterinarian or veterinary technician. The board will accept foreign graduates, who obtain U.S. citizenship, if they meet the requirements of the AVMA's Education Commission for Foreign Veterinary Graduates.

As indicated, each applicant for a veterinarian or veterinary technician license must pass the respective examination. The following illustration indicates the pass/fail statistics of the applicants taking veterinary and veterinary technician written examinations over the past six fiscal years.

NUMBER OF APPLICANTS PASSING THE EXAMINATIONS

<u>Fiscal Year</u>	<u>Veterinarian*</u>			<u>Veterinary Technician**</u>		
	<u>Taken</u>	<u>Passed</u>	<u>%</u>	<u>Taken</u>	<u>Passed</u>	<u>%</u>
1978-79	41	39	95%	3	3	100%
1977-78	49	45	92%	14	11	79%
1976-77	25	23	92%	21	17	81%
1975-76	38	34	89%	41	31	76%
1974-75	45	42	93%	--	--	--
1973-74	44	42	95%	--	--	--

\*Prior to fiscal year 1979 all applicants for a veterinarian license were required to pass a Montana written examination as well as the practical and oral examinations. The board now recognizes the national examination as proof of written performance.

\*\*Veterinary technicians were not licensed in Montana until 1975. Examination results are not available prior to fiscal 1976.

Source: Compiled by the Office of the Legislative Auditor, based on board records.

Illustration 3

There is no inactive status extended to veterinarians or veterinary technicians. If a veterinarian or veterinary technician fails to annually renew their license prior to July 1, they may forfeit their license. If the licensee does not show valid cause for not renewing on time or obtaining continuing education credits within one year, the license is forfeited and the individual must retake the respective Montana examinations. The individual must also retake the written national examination if it has been more than five years since passing that test.

The number of veterinarians and veterinary technicians licensed in Montana has steadily increased over

the last several years. Illustration 4 specifies the total number of veterinarians and veterinary technicians licensed for the past six fiscal years.

NUMBER OF NEW AND COMBINED TOTAL OF NEW AND  
RENEWED LICENSES ISSUED BY THE BOARD

License Type: <u>Fiscal Year</u>	Veterinarian		Veterinary Technician	
	New	Total	New	Total
1978-79	39	621	3	59
1977-78	45	605	11	59
1976-77	23	609	17	48
1975-76	34	598	31	31
1974-75	42	524	--	--
1973-74	42	486	--	--

Source: Compiled by the Office of the Legislative Auditor, based on board records.

Illustration 4

Complaints

Complaints against veterinarians have come from several sources including government, members of the public, other veterinarians, and veterinary associations. Of the formal complaints received, most have been from members of the public and generally involve the adequacy of the procedures used by the veterinarian. Complaints brought by other veterinarians are generally against individuals who are practicing without a license (usually for cattle pregnancy testing). The board generally sends a letter to the nonlicensee requesting the individual to cease and desist. However, in these cases, the board questions its cease and desist authority over nonlicensees and the matter

is referred to the county attorney to obtain a court injunction if not resolved by a letter from the board. Formal complaints have also been received from the Drug Enforcement Administration (DEA) for illegal use of animal drugs and from the Montana Department of Livestock for illegal inspection of livestock.

The administrative assistant for the board indicated that about eight complaints are received per year by telephone, letter, and other sources. The assistant follows up on these complaints by sending a letter and copy of the formal complaint form to those who request one. However, only about half of those who receive the complaint form ever return it to the board.

The board maintains a complaint register and has received, on the average, about four formal complaints per year over the last six years (refer to Illustration 5). There were a total of two formal complaints filed during 1979.

After a formal complaint is received, the office staff sends a Notice of Complaint form to each board member along with a copy of the completed complaint form. The board uses the information contained within these forms to decide on the need for further review.

Six separate investigations have been conducted from 1974 to the present. Investigations have been conducted by the board, by a department investigator, and by contracted private investigators. If, after the

investigation, the board supports disciplinary action, a notice of pending action is sent to the licensee. The notice includes an offer for a hearing and also the board's intentions regarding revocation or suspension.

During the past six years, the board has conducted hearings on two of the six complaint cases that were investigated. Both of these cases involved the illegal purchase or use of drugs. In one case, the board reprimanded the individual. In the other case, the board voted to suspend the license of the individual involved for two years. However, this case was taken to court and the board's decision was reversed based on several factors, including claims of prejudice and failure of the board to provide substantial evidence.

Of the other four complaint cases that have been investigated, three cases are pending on which the board intends to implement hearing procedures. Two of these cases involve the same individual. The first of these complaints involves malpractice; and the second, falsification of animal health inspections. Presently, the board is negotiating for a voluntary suspension of the veterinarian's license prior to a hearing. On the third and most recent case pending, involving an accusation of a stolen examination, the board has completed an investigation and intends to call for a hearing at a future date. The board determined that a hearing was not necessary on one of the six investigated cases.

Illustration 5 gives a summary of all formal complaints reviewed by the board from January 1, 1974 through June 30, 1979. There have been no complaints against veterinary technicians. All complaints reviewed by the board have been against veterinarians.

#### SUMMARY OF COMPLAINTS

<u>Nature of Complaint</u>	<u>Total Number</u>	<u>Who Initiated</u>	<u>Was There Investigation</u>		<u>How Resolved</u>	
Competence	9	Veterinarian Consumer	1 8	Yes No	1 8	Pending Reprimand No Violation
Illegal Use of drugs	2	Veterinarian Gov't Agency	1 1	Yes	2	Reprimand Suspension
Practicing Without a License	9	Veterinarians Vet. Assoc. Gov't Agency	6 2 1	Yes No	1 8	Ltr. Sent Transferred to County Attorney
Misc.***	6	Consumer Gov't Agency	4 2	Yes No	2 4	Reprimand Pending No Violation Ltr. Sent
Total	26	Veterinarian Vet. Assoc. Consumer Government Agency	8 2 12 4	Yes No	6 20	Suspension Reprimand Pending Ltr. Sent No Violation Transfer

\* Board decision reversed in district court.

\*\* Letters sent demanding that the individual cease and desist illegal acts.

\*\*\*Includes: refusing treatment, falsified inspection, theft of licensing examination, poor sanitation, price charged and non-compliance with instructions.

Source: Compiled by the Office of the Legislative Auditor, based on board records.

### Other Board Functions

Board rules also state that the board may conduct or acquire assistance to conduct at any time, an inspection of any veterinary clinic or facility. The veterinary clinics must meet certain sanitation and other standards. If these standards are not met, the board may suspend or revoke the veterinarian's license or refuse re licensure to a veterinarian who does not comply. The Montana Veterinary Medical Association (MVMA) conducts an annual inspection of each clinic in the state; therefore, the board relies on the MVMA to furnish it with information regarding inspections and problems that may exist.

The board is also responsible for review and approval of available continuing education courses for both veterinarians and veterinary technicians. The board must ensure that continuing education credits have been achieved prior to renewing the license of each veterinarian or veterinary technician. The board has denied renewal of a license to practice veterinary medicine in two instances when continuing education was not received and when there was no valid cause for not obtaining the education. These denials have resulted in two hearings. One denial was upheld and is still being protested, while another was dismissed based on testimony and new evidence provided during the hearings. A late fee of \$25 is also assessed in all cases of late renewal.

## EXEMPTIONS TO REGULATION

By law, anyone who holds himself out to be a veterinarian or veterinary technician must be licensed by the board. However, there are certain exemptions to the law that do allow an individual to perform veterinary related functions without a license (section 37-18-104, MCA). These exemptions include:

1. Veterinarians while in the services of the United States, either civil or military.
2. Laboratory technicians or research workers employed by the state or the United States, under the direct supervision of the Board of Livestock, Montana State University, or the United States.
3. Lawfully qualified veterinarians from other states or foreign countries meeting with licensed Montana veterinarians in this state for consultation.
4. A veterinarian residing on a border of a neighboring state and authorized under the laws of that state to practice veterinary medicine, who is actually called to attend cases in Montana but who does not open an office or appoint a place to meet patients or receive calls in the state, if veterinarians licensed and registered in Montana are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state.
5. The employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed three years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American Veterinary Medical Association and authorized by law to confer degrees. However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may

not be for a period in excess of six months from the date of completion of the third year of study.

- 6 Operations known and designated as castrating or dehorning of cattle, sheep, horses and swine.
7. Treatment of an individual's own farm animals or assistance from his employees in the conduct of his business or by other persons whose services are gratuitously given in the case of an emergency.
8. Selling of veterinary remedies and instruments by a registered pharmacist at his place of business.



## Chapter III

### OTHER REGULATION

#### STATE AND FEDERAL

In Montana, the Board of Veterinarians is the principal state agency with regulatory control over the veterinarian and veterinary technician. The Department of Livestock, Animal Health Division, exerts some influence over the profession, as veterinarians are subject to regulations associated with state deputyships issued to veterinarians. The deputyship authorizes performance of certain state related functions such as innoculating and certifying inspections of livestock for shipment and sale. Most registered veterinarians working in the state have a deputyship. Veterinary technicians may obtain approval from the Department of Livestock to perform similar functions.

In order to obtain a state deputyship, a veterinarian must first obtain federal accreditation from the United States Department of Agriculture (USDA). Federal accreditation gives the veterinarian the authority to perform many of the same state related inspections and innoculation of livestock for both interstate and international shipment. The veterinarian must comply with the various rules and regulations of the USDA. Veterinary technicians cannot receive federal accreditation or approval.

Either the Department of Livestock or the USDA may revoke or suspend a veterinarian's deputyship or accreditation for unprofessional acts or violations of their respective regulations.

The Department of Livestock also cooperates with the Drug Enforcement Administration (DEA) of the U.S. Department of Justice to maintain control over the use of various controlled substances and dangerous drugs. The veterinarian must adhere to the regulations associated with the use of various drugs and must be registered under the Controlled Substance Act of 1970.

#### REGULATION BY PROFESSIONAL ASSOCIATIONS

Professional associations exert influence over the actions of members of the profession. The Montana Veterinary Medical Association (MVMA) has an ethics committee (peer review) that may reprimand a veterinarian for unprofessional acts, etc. If the offense is severe, the association will notify the board. During the last six years, the board received two formal complaint cases that were based on MVMA concerns. Approximately 95 percent of the licensed in-state veterinarians are members of the MVMA. The profession is also subject to the professional code of ethics developed by the American Veterinary Medical Association (AVMA).

The MVMA conducts annual sanitation inspections of all association member and nonmember veterinary clinics

in the state. The clinics are billed for the cost of these inspections. The AVMA determines the accreditation and approval of veterinarian and veterinary technician schools. The associations have no specific regulatory control over veterinarians; however, they may bring legal action against an individual as may any citizen.

#### REGULATION IN OTHER STATES

Veterinarians are licensed in all 50 states. In many states, the form of regulation is similar to Montana's and the regulations are administered by a state board similar to the Montana Board of Veterinarians.

The following illustration compares the various elements of Montana's regulations to those of the other states.

COMPARISON-MONTANA AND OTHER STATES;  
REGULATION OF VETERINARIANS

<u>Facet</u>	<u>United States</u>	<u>Montana</u>
Licensing Entity	46 board-type structure 4 other	Board of Veterinarians
Board Size	41 boards - 3 to 5 members 9 boards - 6 to 7 members	6 members
Board Make-up	38 boards - veterinarians only 6 boards - 1 to 2 public members 6 boards - governmental representative	5 veterinarians, 1 public member
Examination	41 boards - written required 3 boards - written, at board discretion 11 boards - oral required 17 boards - oral, at board discretion 15 boards - practical required 13 boards - practical at board discretion	written required, oral and practical at board discretion
Renewal	44 boards - annual 6 boards - biennial	annual
Education	47 boards - require professional education	required
Continuing Education	40 boards - none required 10 boards - required	required

Source: Compiled by the Office of the Legislative Auditor, based on U.S. Department of Health, Education and Welfare data, 1977.

Illustration 6

## Chapter IV

### AREAS FOR LEGISLATIVE CONSIDERATION

The design and effectiveness of various aspects of regulation may warrant legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Veterinarians.

The areas for consideration include:

1. Clarification of veterinary technician license authority.
2. Timeliness of complaint resolutions.
3. Standards of conduct for veterinarians and veterinary technicians.
4. Board member nominations and reappointments.
5. Board membership of veterinary technicians.
6. Drug and instrument sales by feed stores and other retail outlets.
7. Citizenship requirements for veterinarians.
8. Renewal forms and licensee reporting responsibility.
9. Examinations.
10. Administrative functions.
11. Other areas of consideration.

### LICENSING AND AUTHORITY OF VETERINARY TECHNICIANS

Licensing for veterinary technicians is relatively new in Montana. Legislation to regulate and register these individuals was adopted in 1975. However, Title 37, Chapter 18, Part 3 of the MCA is not specific

regarding the authority of the veterinary technician and what functions may be performed by unlicensed individuals. Currently, various functions performed by veterinary technicians, such as assisting during surgery, are also performed by kennel assistants and other veterinary personnel.

Board rules and statute specify certain actions that cannot be performed by a veterinary technician, such as surgery and disease diagnosis. Board rules also specify what functions can be performed in case of an emergency when life saving aid or treatment may be necessary. However, neither statute nor board rules specify the technician functions that cannot be performed by an unlicensed individual such as a kennel assistant, etc. The absence of specific rules and regulations may result in unknowledgeable individuals assuming responsibility for actions for which they are not qualified. These factors may endanger both animal and human health or life, particularly when various drugs or medications are involved.

On the other hand, the absence of specific definitions which would exclude nonlicensees from performing various functions raises some question as to whether or not the present level of regulation is designed solely to protect the public. Since there is no distinction between the duties performed by licensees and nonlicensees, and because the final responsibility for actions

within a veterinary practice rests with the veterinarian, there is some question within the veterinary profession regarding the need for licensing the veterinary technician.

#### COMPLAINT RESOLUTION AND DISCIPLINARY DELAY

The board has been hampered in its attempts to act on several complaints where suspension or revocation of a veterinarian license was appropriate.

Two recent complaint cases have resulted in lengthy delays. The first case involves two separate complaints against the same veterinarian. One complaint alleges malpractice, the other, improper inspection of livestock. The first of these complaints has been pending for 32 months since June 1977, and the other since February 1978. Progress toward resolution of the complaints against this individual has been hampered by legal complications, including evidence problems and prehearing plea bargaining. There was also some problem with obtaining input from the contracted hearing officer. A new hearing officer was recently appointed from the Attorney General's Office and a prehearing conference was held. A date for hearing had still not been set as of January 1, 1980.

The second case involves a recently licensed veterinarian accused of stealing and using the former

written Montana examination. This case has been pending since October 1978. Again, there are problems with the evidence that is available. However, based on the evidence provided by an investigation, the board wants to revoke the veterinarian's license. As of January 1, 1980, a date for hearing proceedings had not been set.

According to the board, progress toward resolution of these complaints has been hindered by the lack of available funding.

These disciplinary delays may influence the decisions of the board in future suspension and revocation proceedings. For example, in one instance the board voted to reprimand only, rather than suspend or revoke the license of a veterinarian convicted through a plea of no contest to a felony drug charge. A statute states that such a conviction is clearly grounds for suspension or revocation. (Section 37-18-311, MCA.)

In addition, the board considers only those complaints where a formal complaint form has been filed. This policy may result in unlawful acts not being investigated, simply because the complainant is not willing to register a formal complaint. The policy is also contrary to the board's statutory function to review complaints against licensees, analyze actions, and cause the prosecution of persons violating the law even when no complaint is filed. About 25 percent of

the licensing boards at the Department of Professional and Occupational Licensing require a written/sworn complaint by law before investigative action will be started. However, there is no such statutory restriction within the veterinary laws. As indicated previously in Chapter II, the department receives about 8 complaints per year. However, only about 3 or 4 per year are filed on the formal complaint form.

As the board generally meets only two or three times a year for regularly scheduled meetings, it may not be practical or timely for the board to review the validity of each individual nonformal complaint. The board may delegate to the administrative assistant the authority to assess the validity and seriousness of each nonformal complaint and determine whether or not to request the board to conduct a brief investigation.

#### STANDARDS OF CONDUCT

The board has adopted the Principles of Veterinary Medical Ethics or standards of conduct prepared by the AVMA. Although the board voted to adopt these standards in June 1977, they have not incorporated these standards into the rules of the board, nor have they indicated such intent. The fact that neither the rules of the board nor state law include these standards may make it difficult for the board to defend its decisions regarding unprofessional conduct. For example, a recent Idaho Supreme Court decision has raised some

doubt regarding the authority of its nursing board to take disciplinary action against a licensee when the board had no established rules of conduct and action was based solely on the board's determination of what is unprofessional conduct.

The board now has a subcommittee working to review the AVMA's Standards of Conduct. The standards that are developed and adopted as board rule may not necessarily reflect the AVMA standards in their entirety and may require additions or deletions.

It is important that the board adopt and communicate, through its rules, specific standards so that licensees and the public may more easily identify unprofessional acts that should be brought to the attention of the board.

#### BOARD MEMBER NOMINATION, APPOINTMENT, AND REAPPOINTMENT

Currently, nominations to fill vacant positions of veterinary members of the board come from the MVMA. The association nominates twice the number of individuals necessary to fill each vacancy. The governor must select the board member from this list unless none of the named individuals are qualified (section 2-15-1618, MCA).

There is only a small percentage of Montana veterinarians that are not members of the professional association. However, this procedure may exclude a well qualified veterinarian from the board simply because he is not a member. In addition, a recent

Washington state supreme court decision held that such a statutory provision regarding its chiropractic board is an unconstitutional delegation of governmental authority to a private organization.

Gubernatorial appointments to the board are not subject to Senate confirmation. The Senate confirms the appointments to a number of the state's boards and commissions. During the 1977-79 biennium of sunset, the Legislative Audit Committee recommended that appointments to regulatory boards be subject to Senate confirmation.

#### BOARD MEMBERSHIP OF VETERINARY TECHNICIANS

Public membership and participation in board decision-making processes should aid in ensuring that public opinion is expressed. Of potentially equal importance, is the input from each facet licensed and regulated by the board. In this case, the veterinary technician, as well as the veterinarian, is licensed by the board and subject to board regulations. The veterinary technician is directly involved in the veterinary profession. Currently, the board has a public member; however, there is no veterinary technician member.

If veterinary technician membership is desired, appointments of members should be balanced against factors such as the size of the board and the professions represented.

### DRUG SALES BY FEED STORES AND OTHERS

The Department of Livestock is involved in several cases each year in which feed stores and other outlets or individuals are selling, dispensing, or administering medications or vaccines that are not approved for sale, or fall into the prescription or dangerous drug catagories. A number of these actions are included in the definition of what constitutes veterinary medicine (section 37-18-102, MCA), and not included in the exemptions (section 37-18-104, MCA). Board involvement in these drug related matters has been minimal. This inaction is contrary to the board's goal to protect the public from incompetent and unlicensed individuals. However, the board was recently informed by the Department of Livestock of a situation involving suspected sale/administering of an unapproved drug and will review it. It is important that the board work closely with the Department of Livestock to facilitate enforcement of state laws of veterinary medicine.

### CITIZENSHIP

Presently, Montana statute requires U.S. citizenship for veterinarian licensure (section 37-18-302, MCA). The United States Supreme Court (McLaughlin vs. Florida, 379 U.S. 1984 and Sugarman vs. Dugal, 413 U.S. 63) declared that such citizenship requirements are unconstitutional.

The board recognizes the AVMA accredited schools and the national examination results as adequate criteria for an individual to make an application for a veterinarian license. Several of the veterinary schools accredited by the AVMA are in Canada. Therefore, non-U.S. graduates of these schools are excluded from potential practice in Montana as they are not citizens.

Licensing of foreign graduates could be made contingent on certification that the individual has met the requirements of the AVMA's Education Commission for Foreign Veterinary Graduates (E.C.F.V.G.) and passing the required examinations.

#### RENEWAL FORMS AND LICENSEE REPORTING RESPONSIBILITY

Currently, the board does not have a specific renewal form. It is using the continuing education verification form to facilitate renewal. This form does not provide information relevant to change of address, etc. In addition, the board does not require, and the form does not allow, space for the licensee to provide information that would alert the board to potential problems. For example, the board may never learn of the existence or results of malpractice actions or violations of federal regulations which could be indications of the quality of services which licensees provide. Therefore, the current form could be expanded to include additional personal and practice information. This would reduce the board's dependence on the complaint process to identify problems.

## EXAMINATIONS

Currently, the board is required by law to give examinations for licensure twice a year. The examinations must be given in January and June. The board has expressed some concern regarding the necessity to give the January examination. Illustration 7 indicates the number of examinations given between 1974 and 1979 in June and January. The board would prefer to have the authority to set examination dates as necessary or limit them to once a year, in June.

### NUMBER OF EXAMINATIONS BY DATE

Type of License:	Veterinarian		Veterinary Technician*	
Month:	<u>January</u>	<u>June</u>	<u>January</u>	<u>June</u>
Year				
1979	15	26	0	0
1978	10	39	5	9
1977	9	16	12	10
1976	13	25	13	28
1975	9	36	--	--
1974	7	37	--	--

\*Veterinary technicians were not licensed in Montana until January 1976.

Source: Compiled by the Office of the Legislative Auditor, based on board records.

Illustration 7

## ADMINISTRATIVE FUNCTIONS

As a result of various sunset reviews of boards within the Department of Professional and Occupational Licensing, three separate administrative areas have consistently been identified. These areas are:

--Reporting requirements of boards.

--Automated license records.

--Multi-year renewal.

Since individual documents will be formulated concerning these administrative areas, a detailed discussion of each is not presented in our review of the board.

#### Reporting Requirements of Boards

Montana currently has a reporting requirement, section 2-7-102, MCA, which requires all state governmental agencies to submit biennial reports to the Governor. However, these reports, when published, contain very limited information. A report containing more specific information (i.e., number of applicants and examinations, pass-fail rate, receipts and expenditures, goals and objectives, complaints, dispositions of complaints) would increase the usefulness of the report and allow the legislature to more easily monitor a board's activity.

#### Automated License Records

At the present time, most licensee records are kept manually by the boards within the department. In addition, new and renewed licenses are manually typed by administrative assistants. An alternative is to automate license records through a department-wide system. The automated system could print renewal notices and also licenses. In addition, such automated records would be used to generate statistical reports

on the licensee populations. Additions, deletions, and corrections to the licensee files could also be made easily.

#### Multi-year Renewal

Most boards within the department are statutorily required to renew licenses on an annual basis. Annual renewal may not be necessary and may result in administrative costs in excess of those necessary for effective regulation. An alternative to annual renewal is to spread renewals over two or more years. If renewals were extended for more than one year, the department workload and administrative expenses could be reduced.

#### OTHER AREAS OF CONSIDERATION

In previous reviews of regulatory boards in Montana, uniformity among boards in reimbursement of board members and the setting of licensing fees commensurate with the cost of regulation were often discussed. These issues were not addressed in this review since the board members are reimbursed according to the usual state reimbursement policies and the accumulated account fund balance is not excessive.



